

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Date of Communication: Not Applicable  
Person To Contact:

, ID No.  
Telephone Number:

Refer Reply To:  
CC:CORP:BR2  
PLR-132471-10  
Date:  
October 20, 2010

### Legend

Distributing =

Controlled =

Business A =

Business B =

Shareholder X =

Shareholder Y =

Date 1 =

Dear :

This letter responds to your July 28, 2010 request for rulings, submitted by your authorized representatives, on certain federal income tax consequences of a proposed

transaction. The information submitted in that letter and in subsequent correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer and accompanied by a penalties of perjuries statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Proposed Transaction (defined below) (i) satisfies the business purpose requirement of § 1.335-2(b) of the Income Tax Regulations, (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)), or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

### **Summary of Facts**

Distributing, a domestic corporation, has authorized and outstanding a single class of voting common stock. Shareholder X and Shareholder Y together own 100 percent of the stock in Distributing. Distributing wholly owns Controlled, a domestic corporation, which it formed on Date 1. Controlled has authorized and outstanding a single class of voting common stock. The officers and directors of Distributing, including Shareholder X and Shareholder Y, will initially serve as the officers and directors of Controlled.

Distributing conducts Business A and Business B. Following the Proposed Transaction, Distributing will conduct Business A and Controlled will conduct Business B. Financial information has been submitted indicating that Business A and Business B each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The Taxpayer has determined it is necessary to separate Business B from Business A in order to attract key management, technical expertise, and financing for Business B.

### **Proposed Transaction**

For what are represented to be valid business reasons, the following steps have been proposed (collectively, the "Proposed Transaction") to separate Business B from Business A:

- 1) Distributing will transfer all of the assets of Business B to Controlled (the "Contribution").
- 2) Distributing will distribute pro rata all of the Controlled stock to Shareholder X and Shareholder Y (the "Distribution").

### **Representations**

Distributing makes the following representations in connection with the Proposed Transaction.

- (a) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (b) Distributing neither acquired Business A nor control of an entity conducting Business A during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, excluding in each case acquisitions that constitute expansions as contemplated by Treas. Reg. § 1.355-3(b)(3)(ii) of Business A. Throughout the five-year period ending on the date of the Distribution, Distributing has been the principal owner of the goodwill and significant assets of Business A and will continue to be such owner following the Distribution.
- (c) Controlled neither acquired Business B nor control of an entity conducting Business B during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, excluding in each case acquisitions that constitute expansions as contemplated by Treas. Reg. § 1.355-3(b)(3)(ii) of Business B. Throughout the five-year period ending on the date of the Distribution, Distributing has been the principal owner of the goodwill and significant assets of Business B and Controlled will be such owner following the Distribution.
- (d) The five years of financial information submitted on behalf of Business A as conducted by Distributing is representative of the present operations of the business and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) The five years of financial information submitted on behalf of Business B as conducted by Distributing, to be conducted by Controlled, is representative of the present operations of the business and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

- (f) Following the Distribution, Distributing and Controlled will each continue the active conduct of its respective business, independently and with its separate employees.
- (g) The Distribution is carried out for the following corporate business purposes: (1) to enable Controlled to attract key management and technical expertise for Business B; (2) to allow top management of Distributing and Controlled to focus exclusively on the problems, opportunities, performance and profitability of their respective businesses; (3) to obtain financing for Business B; (4) to isolate Business B from the risks of Business A. The Distribution is motivated, in whole or substantial part, by one or more of these business purposes.
- (h) The Proposed Transaction is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (i) Distributing and Controlled, and their respective shareholders, will each pay their own expenses, if any, incurred in connection with the Proposed Transaction.
- (j) The total adjusted bases of the assets that will be transferred to Controlled in the Contribution will equal or exceed the sum of (i) the total liabilities assumed (within the meaning of § 357(d)) by Controlled and (ii) the total amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing from Controlled and transferred to Distributing's shareholders or creditors pursuant to the plan of reorganization.
- (k) The total fair market value of the assets that will be transferred to Controlled in the Contribution will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled in the Contribution, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in the Contribution, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing in the Contribution. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Distribution.
- (l) Any liabilities assumed (within the meaning of § 357(d)) by Controlled in the Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.
- (m) Distributing has no investment credit property (including any holdings to which § 47(d) applies).
- (n) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Proposed Transaction.

- (o) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.
- (p) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (q) No two parties to the transaction will be investment companies as defined in § 368(a)(2)(F)(iii)-(iv).
- (r) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.
- (s) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.
- (t) The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (u) Immediately after the Proposed Transaction (taking into account § 355(g)(4)), either (i) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)) or (ii) no person will hold a 50 percent or greater interest (within the meaning of § 355(g)(3)) in the stock of Distributing or Controlled that such person did not hold immediately before the Proposed Transaction.

### **Rulings**

Based solely on the information submitted and the representations made, we rule as follows:

- (1) The Contribution, together with the Distribution, will be a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled each will be “a party to a reorganization” within the meaning of § 368(b).
- (2) No gain or loss will be recognized by Distributing on the Contribution. §§ 357(a), 361(a).
- (3) No gain or loss will be recognized by Controlled on the Contribution. § 1032(a).
- (4) Controlled’s basis in each asset received from Distributing in the Contribution will equal the basis of such asset in the hands of Distributing immediately before the Contribution. § 362(b).
- (5) Controlled’s holding period in each asset received from Distributing in the Contribution will include the period during which such asset was held by Distributing. § 1223(2).
- (6) No gain or loss will be recognized by Distributing on the distribution of the Controlled stock in the Distribution. § 361(c)(1).
- (7) No gain or loss will be recognized by (and no amount will be included in the income of) Shareholder X and Shareholder Y on the receipt of the Controlled stock in the Distribution. § 355(a)(1).
- (8) The aggregate basis of the Distributing stock and Controlled stock in the hands of Shareholder X and Shareholder Y immediately after the Distribution will equal the aggregate adjusted basis of the Distributing stock held immediately before the Distribution, allocated in proportion to the fair market value of each under Treas. Reg. § 1.358-2(a)(2). § 358(a)(1), (b).
- (9) The holding period of the Controlled stock received by Shareholder X and Shareholder Y in the Distribution will include the holding period of the Distributing stock with respect to which the Distribution will be made, provided that the Distributing stock is held as a capital asset on the date of the Distribution. § 1223(1).

- (10) The earnings and profits of Distributing, if any, will be allocated between Distributing and Controlled in accordance with § 312(h)(1) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(e)(3).

### **Caveats**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

In particular, no opinion is expressed regarding whether the Proposed Transaction: (i) satisfies the business purpose requirement of § 1.355-2(b), (ii) is being used principally as a device for the distribution of earnings and profits of Distributing, Controlled, or both (see § 355(a)(1)(B) and § 1.355-2(d)), or (iii) is part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

### **Procedural Matters**

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Gerald B. Fleming  
Senior Technician Reviewer, Branch 2  
(Corporate)

cc: